IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.292 OF 2006

Chinchwad Seva Sanstha Maryadit, Chinchwad & Anr. ...Petitioners. V.K.S.(Vikas)

Versus

Surva Daman @ Sharad Jimgonda Patil & Ors. ...Respondents.

Shri S.S.Patwardhan for the Petitioners.
Shri G.M.Savgave for Respondent Nos.1 to 8.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 2nd FEBRUARY, 2006.

P.C. :

1. Heard Shri Patwardhan - learned Counsel appearing for the petitioners and Shri Savgave - learned Counsel appearing for the respondent Nos.1 to 8.

2. The Petition challenges an order passed by the Co-operative Appellate Court in Appeal No.61 of 2005. By the order under challenge, delivered on 21st December, 2005, the learned Member of the Appellate Co-operative Court has set-aside the order of the trial Court passed on 8th April, 2005 in Dispute No.1404 of 2003.

3. Respondent Nos.1 to 8 before this Court are the original disputants. The petitioners as well as the others are the original respondents thereto. The dispute is filed claiming several declarations. It is not necessary to advert to them because none dispute that an application for interim reliefs was made by the original disputants. They claimed that the resolutions passed on 7th August, 2003 as well as 9th August, 2003 by the Managing Committee as well as the General Body of the first-petitioner should not be implemented and enforced so also the persons who have been taken on the Managing Committee should be restrained from acting as such and discharging their functions as well as exercising powers during pendency of the dispute.

4. By elaborate judgment the trial Court has on the earlier occasion not granted these reliefs, but, the Co-operative Appellate Court in Appeal No.168 of 2003 had passed an order only restraining one of the opponent i.e. opponent No.12 to work as Managing Committee member till the dispute is decided. This was on a prima-facie finding that his cooption is illegal. Thereafter, another application for interim reliefs has been preferred on 5th November, 2004 and this time a stay was sought for implementation of resolution dated 3rd January, 2004 to the extent of Item No.13. Similarly, once again it was claimed that the cooption of opponent Nos.12 to 18 to the dispute should not be

acted upon.

5. The trial Court on this occasion, after hearing the petitioners as well as the original opponents, by its order dated 8th April, 2005 held that the said application cannot be granted because prima-facie case for granting of injunction is not made-out and balance of convenience is also not in favour of the applicants. It observed very specifically that irreparable injury will be caused, if the resolution is not allowed to be acted upon.

6. The lower Appellate Court has set-aside this order by relying upon the earlier order of the Co-operative Appellate court dated 6th October, 2003. As observed above that order was passed by the Co-operative Appellate Court by interfering with the order of the trial Court only to the extent of cooption of respondent No.12.

7. The earlier order as well as the observation therein could not have been relied upon. That apart, a resolution which was passed on 25th August, 2003 has been set-aside by an interlocutory order. The dispute virtually has been allowed. The conclusions recorded cannot be said to be tentative and prima-facie. More so, when even against the earlier order of the Co-operative Appellate Court a Writ Petition filed in

this Court is pending. Once the issue as to whether the original opponents have resigned or not is under consideration, and admittedly in their place some persons have been coopted and who are functioning as Managing Committee members, then further resolutions passed in their presence cannot be nullified unless it is held that the original disputants are entitled to the declaration with regard to the resolution dated 25th August, 2003. All such matters, in my view, are to be decided after evidence is led and at trial. The Co-operative Appellate Court could not have recorded conclusive findings and even Shri Savgave appearing for original appellants found it difficult to sustain them.

7. In the result, the Writ Petition is allowed. The order passed by the Co-operative Appellate Court is set-aside. Instead, it is directed that all resolutions which are subject matter of the Appeal and passed subsequent to the alleged resignations of the petitioners as well as decisions taken therein would be subject to the result of the main dispute and if the trial Court upon material produced, is of the view that the disputants have not resigned from the Society in question, then it would be open for it to pass appropriate orders in accordance with law with regard to all such resolutions and acts of the Managing Committee subsequent to 25th August, 2003.

8. All contentions of both sides on merits are expressly kept open. The trial Court should not be influenced by either the observations of the Appellate Court or those made in this order and adjudicate upon the dispute on its own merits and in accordance with law and as expeditiously as possible and shall endeavour to dispose it of by 31st August, 2006.

(S.C.DHARMADHIKARI,J.)